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Technical assistance and capacity-building

Report of the United Nations High Commissioner for Human Rights on cooperation with Georgia

Summary

In its resolution 34/37, the Human Rights Council requested the United Nations High Commissioner for Human Rights to continue to provide technical assistance through his presence in Tbilisi, and to present a written report on developments relating to and the implementation of the resolution at its thirty-sixth session.

The present report describes technical assistance efforts by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to strengthen the promotion and protection of human rights in Georgia, while noting the challenges that need to be addressed through concrete measures.

Another key element of the resolution was the Council's call for immediate access for OHCHR and international and regional human rights mechanisms to Abkhazia, Georgia, and to the Tskhinvali region/South Ossetia, Georgia. No such access has been granted to OHCHR or to United Nations human rights mechanisms.

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I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 34/37, in which the Council requested the United Nations High Commissioner for Human Rights to continue to provide technical assistance through the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Tbilisi, namely the Senior Human Rights Adviser. The Council also requested OHCHR to present an oral update[1] on the implementation of its resolution 34/37, at its thirty-fifth session, and a written report on related developments, at its thirty-sixth session. In resolution 34/37, the Council also called for immediate access for OHCHR and international and regional human rights mechanisms to Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia.

2. The present report describes the technical assistance provided by OHCHR in Georgia and reviews the main human rights developments pursuant to resolution 34/37.

3. It draws on information provided by the Government of Georgia; the Office of the Public Defender of Georgia (an "A" status national human rights institution); international and regional organizations, as well as local non-governmental organizations; and credible open source documents.[2]

4. OHCHR exercised due diligence to corroborate, to the extent possible, the validity of the information received, within the constraints of limited resources and the lack of access to Abkhazia and South Ossetia. The present report therefore does not provide a comprehensive account of the human rights situation, but rather highlights some of the key human rights issues and developments on the basis of the information received by OHCHR.

5. OHCHR reached out to various stakeholders, and posted a call for submissions pursuant to resolution 34/37 on its website to seek contributions for the oral update and the report of the High Commissioner, including from Member States, United Nations entities, the Office of the Public Defender of Georgia, and intergovernmental and non-governmental organizations.

II. Technical assistance and human rights developments

6. In 2007, an OHCHR Senior Human Rights Adviser was deployed to Tbilisi, who covers the South Caucasus region. He is supported by national staff members in Georgia and Azerbaijan. In Georgia, he has been advising and providing technical assistance to the Government, Parliament, the judiciary, the Office of the Public Defender, civil society organizations, the United Nations country team and the donor community, including to address gaps, build on progress, and support compliance with international human rights standards, and to assist, among other things, in the implementation of the National Human Rights Strategy and the related plan of action.

A. Main areas of technical cooperation

7. Following the parliamentary elections of October 2012, human rights issues became more prominent on the agenda of the executive and legislative branches of the Government of Georgia.

8. A report entitled *Georgia in Transition*, completed in September 2013, by Thomas Hammarberg, the European Union Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, was used as the baseline study for the development of the

[1] The oral update was presented on 21 June 2017. An archived webcast of the oral update is available from http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/35th-session/watch/item10-general-debate-32nd-meeting-35th-regular-session-human-rights-council/5478270539001.

[2] With a cut-off date of 1 June 2017.

National Strategy for the Protection of Human Rights in Georgia, 2014-2020, which was adopted by the Parliament in 2014.

9. The stated aim of the National Strategy is to establish "institutional democracy" and to ensure that actions of duty bearers are geared towards the realization of the human rights of the population. To support the National Strategy, the Government elaborated national human rights action plans for 2014-2015 and for 2016-2017. In April 2017, the Government published and disseminated a report on progress in the implementation of the National Strategy.[3]

10. A National Human Rights Action Plan Coordinating Inter-Agency Council, chaired by the Prime Minister, was established in 2014 to oversee the implementation of the National Human Rights Action Plan, but it has not met since mid-2015. Since 2016, the Parliament has been increasing its engagement in the human rights sphere by enhancing its oversight of the implementation by the executive branch of recommendations of international and regional human rights mechanisms and of the national human rights institution.

11. Along with other United Nations entities, OHCHR provided assistance to the Government with the elaboration and implementation of the National Human Rights Action Plan, including in the framework of a programme funded by the European Union. This included capacity-building for legal professionals, police officers, university students and youth groups, as well as for civil servants, including representatives of local self-government bodies. Most of the OHCHR activities were planned in close consultation with the National Human Rights Action Plan secretariat and were conducted in response to requests by, and in cooperation with, the Government. The present report highlights key human rights issues which OHCHR activities have aimed at addressing.

I. Administration of justice

12. OHCHR assistance in the justice sector focused on building the awareness and capacity of new judges to apply international human rights standards. In close cooperation with the High School of Justice, OHCHR trained judges, with an emphasis on the rights to freedom of expression and freedom of religion or belief, the right to private and family life, and access to justice for persons with disabilities. To promote the right to a fair trial and the principle of equality of arms, OHCHR developed several studies at the request of the Chief Justice of the Supreme Court. Within broader assistance efforts aimed at promoting equality of arms, OHCHR developed sustained cooperation with the Georgian Bar Association, and provided training that is now included in the list of professional courses for practising lawyers. OHCHR assistance in the justice sector has been grounded on relevant recommendations by United Nations human rights mechanisms.

13. The progress report on implementation of the National Strategy noted "significant scepticism in society as to the independence and impartiality of the judiciary".[4] Contributing to the growth of this perception was the approach of the judiciary to the case of disputed ownership of the Rustavi 2 television station, the country's most watched channel, which was generally critical of the Government. On 3 March 2017, the European Court of Human Rights issued, and on 8 March extended, an interim measure suspending until further notice the ruling issued by the Supreme Court of Georgia on 2 March to transfer the ownership to a previous owner. The Government of Georgia announced that it would implement that interim measure.

[3] "Report on progress on the implementation of the National Strategy for the Protection of Human Rights in Georgia, 2014-2020, and recommendations as to future approaches", prepared by an international human rights expert and available from http://www.ge.undp.org/images/files/426/ReportonImplementationofHumanRightsStrategyENGEWMIUNDP.PDF.

[4] Ibid., p. 16.

2. Combating torture and ill-treatment

14. At the end of her visit to Georgia in May 2014, the former High Commissioner, Navi Pillay, recommended the creation of an "independent investigative body to look into allegations of abuse by the police and other law enforcement agencies".[1] In August 2014, the Human Rights Committee, in its concluding observations on the fourth periodic report of Georgia, recommended that "the State party should pursue its plans to establish an independent and impartial body to investigate allegations of abuse by police and other law enforcement officers, including torture and inhuman or degrading treatment."[2] Through the National Human Rights Action Plan for 2016-2017, the Government committed to the implementation of that recommendation and options were developed by independent experts, including OHCHR, and were presented to the Government in March 2017.

15. In June 2017, draft legislation was elaborated by the Government to create a special department within the Office of the Chief Prosecutor to examine allegations of torture and ill-treatment. This draft legislation is included in the autumn 2017 agenda of the Parliament for discussion. OHCHR stands ready to continue assisting the Government to establish a credible independent mechanism that would demonstrate the commitment of Georgia to preventing and combating torture and ill-treatment.

16. Various sources cited a recent trend of individuals being approached by the police with an "invitation for a conversation" and being de facto apprehended without any procedural guarantees. Reportedly, individuals affected, unlike those who are brought for questioning under regular procedures, were neither registered as having entered a police station nor accompanied by, or granted, a lawyer and a medical check, and were thus deprived of the safeguards against potential ill-treatment. Such a practice should be urgently terminated and guarantees against ill-treatment should be enjoyed effectively by every individual who is de facto deprived of liberty. In 2017, OHCHR included awareness-raising discussions on the unlawful nature of such practices in training programmes for police officers and legal professionals.

3. Protecting the right to privacy

17. In February 2017, at the request of the Parliamentary Committee on Legal Issues, OHCHR provided comments on a package of amendments to laws governing surveillance activities of law enforcement agencies. These comments were intended to bring legislation into line with the applicable international standards and with the April 2016 ruling of the Constitutional Court that bans unrestricted access by security agencies to monitor communications conducted over telecommunication networks. Many recommendations by OHCHR were integrated into the amended legislation, which was endorsed by the Parliament on 1 March 2017. However, a number of OHCHR recommendations aimed at ensuring the independence of the leadership of the agency that is tasked with surveillance were rejected. On 20 March 2017, the President of Georgia vetoed the legislation, citing concerns that the Operative-Technical Agency created by the new legislation and mandated to conduct surveillance activities would lack independence, and arguing that the costs of surveillance would be borne by private communications operators.

18. On 22 March 2017, the Parliament overrode the President's veto of the proposed amendments without taking his concerns into account. The progress report on the implementation of the National Strategy recommended that the legislation be revisited in the light of "the judgment of the Constitutional Court" and of "the principles set out in the National Strategy".[3] OHCHR stands ready to continue to assist all stakeholders to ensure that legislation and practices in this area meet international human rights standards.

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[1] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14624.

[2] See CCPR/C/GEO/CO/4, para. 12.

[3] Report on progress in the implementation of the National Strategy, p. 24.

4. Combating discrimination

19. Combating discrimination is a centrepiece of all ODIHR capacity-building activities, due to the many challenges in this area. ODIHR supports the operationalization of the Government's commitment to building an inclusive society as outlined in the National Human Rights Strategy and the national human rights action plans.

20. In May 2014, Parliament adopted the Law on the Elimination of All Forms of Discrimination, with an extensive list of prohibited grounds for possible discrimination. While earlier proposals had envisaged an "equality inspector" to oversee the implementation of the law, that role was ultimately assigned to the Office of the Public Defender, which lacks powers of enforcement and can only issue recommendations.

21. On 17 May 2017, at the invitation of the Government of Georgia, ODIHR observed a one-hour rally held by the lesbian, gay, bisexual, transgender and intersex community on International Day against Homophobia, Transphobia and Biphobia. The gathering took place before the building of the Administration of the Government of Georgia, nearby Tbilisi's main central avenue, under heavy police protection. The Government and the police are to be commended for making this rally possible and providing the necessary security. The event required heavy protection, due to credible threats of violence by some individuals observing the "Family Day" announced by the Georgian Orthodox Church on that same day. Observers of the "Family Day" were granted concentrated and exclusive use of Tbilisi's central avenue for events they had organized for that day, thus impeding any further International Day against Homophobia, Transphobia and Biphobia activities in the area. Such an approach illustrates persisting discriminatory attitudes towards lesbian, gay, bisexual, transgender and intersex persons and their rights.[4]

22. Discrimination on religious grounds is one of the issues that ODIHR regularly addresses in its capacity-building activities. Since 2014, the Georgian State, in addition to funding the predominant Georgian Orthodox Church, has also provided funding to the Roman Catholic, Armenian Apostolic, Muslim and Jewish communities. For several years, in its regular reporting, the Office of the Public Defender noted that the Muslim community had been facing difficulties in carrying out religious services. A recent example is the refusal of the mayor of Batumi (the second-largest city), in May 2017, to issue a permit to the Muslim community to build a new mosque, notwithstanding that the existing mosque is too small, forcing many Muslims to pray on the open air.[5] According to the information provided by the Government of Georgia, a reconstruction project for the existing mosque has been developed. A new plot has been allocated to expand the mosque and the Government will bear the cost of the project.

5. Gender equality and combating domestic violence

23. ODIHR contributed to advocacy by the United Nations country team on gender equality and combating domestic violence. In 2016, the Office of the Public Defender reported 13 cases of femicide, and national non-governmental organizations reported a worrying trend of courts issuing pretrial measures and lenient sentences in cases of domestic and gender-based violence. About 30 per cent of those convicted of domestic crimes and crimes of violence against women received a prison term, while the others were either subjected to a conditional sentence or sentenced to community service. In 2017, ODIHR started training legal professionals on the application of law in cases of domestic and gender-based violence.

24. Joint advocacy by the United Nations country team and other international actors resulted in an amendment to the Civil Code that does not allow the State to register marriages of persons below the age of 18 years, so as to end the harmful practice of child

[4] In 2019, the European Court of Human Rights ruled that Georgia had failed to protect the rights of lesbian, gay, bisexual, transgender and intersex individuals to freedom of peaceful assembly. A similar case is pending with regard to events that took place in 2013.

[5] See http://ombudsman.ge/uploads/other/4/4442.pdf, p. 50.

marriages. The amendment came into effect on 1 January 2017, and is a welcome development. It is now critical to ensure the stringent enforcement of this law.

25. The United Nations country team and other international actors in Georgia have also been advocating for greater political participation by women. Only two out of 18 Cabinet ministers and 24 out of 150 parliamentarians are women. The Committee on the Elimination of Discrimination against Women, in its 2014 concluding observations, recommended that Georgia "adopt temporary special measures, including statutory quotas, in accordance with article 4 (1) of the Convention and in line with the Committee's general recommendation No. 25 on the subject, as part of a necessary strategy to accelerate the achievement of substantive equality of women and men".[*]

II. Access to Abkhazia and South Ossetia

26. On 11 April 2017, pursuant to Human Rights Council resolution 34/37, OHCHR sent letters to the authorities in control in Abkhazia and in South Ossetia, seeking unfettered access to the population concerned to assess the human rights situation, taking into account long-standing conflicting allegations of human rights violations.

27. OHCHR received a response on 19 April 2017 from the authorities in control in South Ossetia, which invoked status-related issues, thus preventing OHCHR from negotiating access under resolution 34/37.

28. On 22 April 2017, OHCHR received a response from the authorities in control in Abkhazia, indicating that a visit by OHCHR would not be possible unless an Abkhaz delegation was allowed to present its position concerning the human rights situation before the Human Rights Council.

29. Lack of access to Abkhazia and South Ossetia raises legitimate questions and concerns about the human rights situation of the population living there.

30. In his past five reports to the General Assembly on the status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia,[**] the Secretary-General called for OHCHR to be granted access to Abkhazia and South Ossetia.

31. Despite repeated requests since 2011, access to Abkhazia and South Ossetia has not been granted for proposed OHCHR technical human rights missions, nor for the former High Commissioner in the context of her visit to Georgia in May 2014, nor for special procedures of the Human Rights Council (for instance the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,[***] the Special Rapporteur on the human rights of internally displaced persons, and the Special Rapporteur on the sale of children, child prostitution and child pornography).[****]

32. The Government of Georgia, in its written submission to OHCHR, noted that "since 2012, a delegation preparing the Consolidated Report of the Secretary-General of the Council of Europe on Georgia has been denied access to Abkhazia and South Ossetia. In January 2014 and November 2015, the Commissioner for Human Rights of the Council of Europe was not allowed to visit the regions." The Government of Georgia also informed OHCHR that in 2015 and 2016, the High Commissioner on National Minorities, of the Organization for Security and Cooperation in Europe, was denied entry to Abkhazia.

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[*] See CEDAW/C/GEO/CO/4-5, para. 17, and Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004) on temporary special measures. The general recommendation addresses cases where the long-term effects of discrimination have seriously disadvantaged women, which may require measures that give women not just formally equal treatment to men, but preferential treatment, in order to create actual equality for women.

[**] A/67/305, A/68/340, A/69/359, A/70/334 and A/71/359.

[***] See A/HRC/31/57/Add.3, para. 4.

[****] See A/HRC/34/55/Add.1, para. 6.

33. OHCHR has been informed that an independent and comprehensive assessment of the human rights situation in Abkhazia was finalized in January 2017 following several field visits by independent expert Thomas Hammarberg, at the request of the European Union Special Representative for the South Caucasus and the Crisis in Georgia. At the time of the present report being finalized, that assessment had not been made public.

34. The loss of effective control by the central Government of Georgia over Abkhazia and South Ossetia and the persistent denial of access by the authorities in control of those regions have been cited by United Nations treaty bodies, namely the Committee on the Rights of the Child,[14] the Committee on the Elimination of Racial Discrimination[15] and the Committee on the Elimination of Discrimination against Women,[16] as obstacles to the implementation of the relevant treaties.

35. Since December 2016, the authorities in control in Abkhazia and the Government of Georgia have allowed the Office of the United Nations High Commissioner for Refugees (UNHCR) to establish a shuttle bus, free of charge, to transport the most vulnerable of the affected population across the Inguri bridge, which is the main crossing point between Abkhazia and the Tbilisi-controlled territory. This has reportedly significantly facilitated crossings for medical care and family visits and for people to buy goods. In addition, in late 2016, UNHCR was able to visit the upper Kodori Valley — for the first time since 2009 — which allowed it to assess the humanitarian situation in that isolated region and to formulate recommendations for assistance.

36. There has been no recent independent assessment of the human rights situation in South Ossetia. Since the conflict in August 2008, United Nations agencies, funds and programmes have had no operational access to the area. Only UNHCR was able to conduct a humanitarian assessment mission, in August 2016, for the first time since the 2008 conflict. It was thus able to assess the humanitarian needs of the population of concern to UNHCR and to get initial information on returns to Akhalgori, which is predominantly inhabited by ethnic Georgians.

37. With a view to ensuring better support for the enjoyment of human rights, as well as predictable and sustainable access and service delivery by humanitarian and development actors in Abkhazia and South Ossetia, it would be important to review, and if necessary modify, the law on occupied territories, which Georgia adopted in 2008 and amended in 2013. For that purpose, due consideration should be given to the comments and recommendations issued in 2013 by the European Commission for Democracy through Law (Venice Commission),[17] and those of the Office of the Public Defender[18] addressed to the Government of Georgia in 2017.

38. According to the Government of Georgia, the "law on the order of entry into and exit from Abkhazia", of January 2016, imposed new restrictive provisions of entry into, exit from and movement within Abkhazia, thus further restricting the already limited access and activities of international governmental and non-governmental organizations in the area.

C. Situation of internally displaced persons and refugees

39. Resolution 34/37 expresses concerns that "internally displaced persons and refugees continue to be deprived of the right to return to their homes in a safe and dignified manner". Since 2009, the General Assembly has adopted an annual resolution on the status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia, following consideration of the annual report of the

[14] See CRC/C/GEO/CO/4, para. 4.
[15] See CERD/C/GEO/CO/6-8, para. 3.
[16] See CEDAW/C/GEO/CO/4-5, para. 12.
[17] See Venice Commission opinion No. 744/2013 on the 2013 draft amendments to the law on the occupied territories of Georgia (Strasbourg, 9 December 2013).
[18] See the special report of the Public Defender of Georgia entitled "Analysis and recommendations regarding the Law of Georgia on Occupied Territories" (2017).

Secretary-General on that topic. Therefore, the present report does not address that subject in further detail.

D. Human rights framework and key issues

40. In its resolution 48/141, the General Assembly mandates the High Commissioner for Human Rights "to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights". Regardless of questions related to status, it is vital to focus on the underlying human rights issues and address any conduct that affects the human rights of all individuals concerned. While some entities are not a party to international human rights treaties, it has been stressed in various reports that these entities are obliged to respect international human rights law when they exercise significant control over territory and population and have an identifiable political structure.[37] Accordingly, the authorities in control in Abkhazia and South Ossetia are responsible to uphold the fundamental freedoms and human rights of all people living under their control.

41. In its resolution 34/37, the General Assembly expresses "serious concern at the human rights and humanitarian situation in those regions of Georgia", such as "reported kidnappings, arbitrary detention, interference with property rights, restrictions on access to education in one's native language, free movement and residence, as well as continued discrimination on the grounds of ethnic origin in both regions".

42. The absence of a political solution continues to undermine the protection of human rights in Abkhazia and South Ossetia. Pressing human rights issues are closely interlinked, while decisions and practices that are often driven by political divergence affect a range of human rights and freedoms.

43. Restrictions to freedom of movement on the administrative boundary lines with Abkhazia and South Ossetia remain among major concerns, and considerably hamper the enjoyment of other rights and constrain confidence-building measures across the dividing lines. Measures such as the closure of crossing points, the so-called "borderization" process, and procedures applicable to access to and management of dividing lines and adjacent areas are compounded by limited access to documents necessary to exercise civil, cultural, economic, political and social rights without discrimination.

44. Truth and accountability for past and more recent human rights violations, including legacies of the 2008 conflict, remain to be addressed, particularly on the question of missing persons, the rights of displaced people, issues related to access to and protection of cultural heritage, and the right to education as a means to preserve identity, foster trust among communities and build sustainable peace.

1. Truth and accountability

45. The International Criminal Court is currently investigating alleged crimes committed in the context of an international armed conflict between 1 July and 10 October 2008, in and around South Ossetia, which include crimes against humanity, namely murder, forcible transfer of population and persecution, and war crimes, namely attacks against the civilian population, wilful killing, intentionally directing attacks against peacekeepers, destruction of property and pillaging.[38]

2. The right to life, and enforced disappearances

46. Prompt, impartial and comprehensive investigations into violations of the right to life are essential. Such grave incidents have been rare in the past few years, but it is critical to ensure that there is no impunity, regardless of where they took place.

[37] See E/CN.4/2005/7, para. 76; A/HRC/2/7, para. 19; A/HRC/8/17, para. 9; A/HRC/10/22, para. 22; A/HRC/12/37, footnote 7; and A/HRC/25/21, para. 11.

[38] See https://www.icc-cpi.int/georgia.

47. It is of great concern that an investigation into the killing of an ethnic Georgian civilian man at the Abkhaz Administrative Boundary Line, Khurcha crossing point, on 19 May 2016, has been suspended.[31] According to the information received, the authorities in control in Abkhazia have dropped charges against the alleged perpetrator. In its submission to OHCHR, the Office of the Public Defender observed that this killing, as well as the disappearance of an individual from the village of Kordi, Gori municipality, on 26 May 2016, demonstrate the vulnerability of the communities living along the Administrative Boundary Line.

3. Missing persons

48. The issue of missing persons entails the right of family members to know the fate of missing relatives, including their whereabouts, or, if dead, the circumstances and cause of their death. It also carries the obligation to conduct effective investigations into the circumstances surrounding an enforced disappearance. Ensuring accountability is critical, both as a preventive measure and as a measure of redress.

49. According to the International Committee of the Red Cross,[32] over 2,300 persons remain unaccounted for in connection with the conflicts of the 1990s, and 42 as a result of the 2008 conflict.[33]

50. The International Committee of the Red Cross continues to work on the issue of missing persons, having established two coordination mechanisms in 2010 to clarify the fate of persons missing in relation to the armed conflicts of the 1990s and August 2008 and their aftermath.[34] From 2010 to 2016, 249 sets of human remains were thus recovered.[35]

4. Freedom of movement

51. Freedom of movement is enshrined in article 13 of the Universal Declaration of Human Rights. Restrictions on freedom of movement, including for reasons of security, must be strictly necessary for that purpose, proportionate and non-discriminatory. Freedom of movement is also a prerequisite for the enjoyment of civil, cultural, economic, political and social rights. The exercise of some rights, such as the rights to work, health and education, depends to a large extent on the ability to move freely and to choose one's residence. Thus, restrictions on freedom of movement can lead to severe limitations on various other human rights.

5. Crossing points

52. The closure of two crossing points along the Abkhaz Administrative Boundary Line (i.e. Otobaia-Orsantia and Nabakevi-Khurcha), on 6 March 2017, undermines efforts to uphold freedom of movement as a human right and an important confidence-building measure.

53. On 26 January 2017, in reaction to the announcement of the upcoming closure of these crossing points, the United Nations country team in Georgia underlined that the population affected would find it more difficult to access basic services, such as health care and education, and to participate in economic activities and family and social events across

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[31] The victim was shot by an armed man who had arrived from Abkhazia and who retreated to that territory after perpetrating the killing.

[32] International Committee of the Red Cross (ICRC) press release, 3 March 2017, available from https://www.icrc.org/en/document/georgia-abkhazia-more-work-being-done-solve-cases-missing-people.

[33] ICRC press release, 16 December 2016, available from https://www.icrc.org/en/document/georgia-south-ossetia-tenth-meeting-held-seek-ways-forward-cases-missing-persons-conflicts.

[34] ICRC press release, 26 April 2010, available from https://www.icrc.org/en/document/georgia-missing-persons-clarifying-the-fate.

[35] ICRC press release, 4 May 2017, available from https://www.icrc.org/en/document/georgia-abkhazia-south-ossetia-more-30-graves-may-be-excavated-search-missing-people.

the dividing line.[26] On 27 February 2017, in response to questions on the announced closing of crossing points along the Inguri River, the Secretary-General's spokesperson underscored that this would be detrimental to the freedom of movement and overall well-being of the local population, including schoolchildren, on both sides of the Administrative Boundary Line, especially for people living in Gali district.

54. According to other various sources, the reduction in the number of crossing points is likely to affect the right to education of many children, as attending school in their native language on Tbilisi-controlled territory is one of the main reasons why they cross the Administrative Boundary Line, travelling by bus for 15 to 20 kilometres in each direction and being dependent on strict time schedules.

55. Some sources also highlighted the risk that cases of deprivation of liberty by Russian Federation border guards may increase, especially at "unauthorized" crossing points. The closure of crossing points also reportedly limits opportunities to carry goods, both for personal consumption and for trade, and has negatively affected the enjoyment of social and economic rights, especially those of Gali residents. The crossing points in question used to be used for non-emergency medical transfers, which are no longer possible.

56. According to the Government of Georgia, at the end of 2016, the so-called border zone in the "lower zone" of Gali district was expanded, further restricting freedom of movement for the residents of the villages located within that zone and for those living in the rest of Abkhazia.

6. So-called "borderization"

57. In May 2014, following her mission to Georgia, the former High Commissioner, Ms. Pillay, noted that since May 2013, razor wire and other forms of fencing, as well as additional watchtowers and other monitoring equipment, had been set up by Russian Federation border guards along a stretch of the Administrative Boundary Line with South Ossetia. She stressed that that practice further impeded the right to freedom of movement for internally displaced persons, and the enjoyment of the rights to property, water, health, education and access to religious and cultural sites. She underscored that the impact on local villagers on both sides of the wire was devastating.

58. According to the Government of Georgia, as of 15 May 2017 the total length of razor wire, barbed wire fences and other artificial obstacles reached nearly 52 kilometres along the Administrative Boundary Line with South Ossetia, and 48 kilometres along the Administrative Boundary Line with Abkhazia.

59. Reportedly, these measures have shifted the line of control deeper into Georgian-controlled territory and have created tensions in villages surrounding the Administrative Boundary Line.

60. According to various sources, the installation of razor wire, barbed wire fences and other artificial obstacles along the administrative boundary lines with Abkhazia and South Ossetia considerably obstructs freedom of movement and economic activities, and exacerbates the perception of insecurity. In some instances, it physically divides families; it also prevents access to agricultural land and water supplies, as well as to churches and cemeteries.

7. Deprivation of liberty and allegations of torture and ill-treatment

61. According to the Universal Declaration of Human Rights, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (art. 5) and "no one shall be subjected to arbitrary arrest, detention or exile" (art. 9). All related allegations should be promptly addressed and properly documented.

62. OHCHR has been receiving allegations of deprivation of liberty of ethnic Georgians in connection with crossing the Administrative Boundary Line. According to recent reports,

[26] See www.ungeorgia.ge/eng/news_center/media_releases?info_id=507#.WR1X3-uGPcs.

such detention may last for several days before people are freed upon payment of substantial fines, often simply for attempting to visit their property on the other side of the wire to harvest their crops — which is the sole source of income for people affected.

63. According to the Government of Georgia, acts "which amount to torture and ill-treatment are regular" and there has been information on inadequate conditions in so-called "detention centres" in Abkhazia and South Ossetia. Also, according to the Government of Georgia, people are regularly arrested and detained by Russian Federation border guards for so-called "illegal border crossing" along the administrative boundary lines. According to data from the State Security Service of Georgia, between 2008 and December 2016, 1,788 people were detained by Russian Federation border guards for so-called "illegal border crossing" along the Administrative Boundary Line with Abkhazia, and 987 people were detained along the Administrative Boundary Line with South Ossetia; between 1 January 2016 and 12 December 2016, 190 people were detained along the Administrative Boundary Line with Abkhazia, and 132 people were detained along the Administrative Boundary Line with South Ossetia. According to the State Security Service of Georgia, the above-mentioned cases relating to the Administrative Boundary Line with South Ossetia represent only 15-20 per cent of the actual number of cases occurring along that Administrative Boundary Line.

64. Citing media sources, the Office of the Public Defender reported that, according to data released by the Border Service of the Federal Security Service of the Russian Federation, there were about 14,000 cases of "detention" on the Abkhaz Administrative Boundary Line between 2009 and 2016. Accounts collected by the Office of the Public Defender from individuals who had been detained by Russian Federation border guards between July 2014 and November 2016 indicate poor conditions in basements of the Russian Federation military bases, where they would reportedly be held for several hours to a few days. The information concerned cases in the Khurcha region and the villages of Khurcha and Nabakevi, for instance.

65. Cases of long-term deprivation of liberty in Abkhazia and South Ossetia were cited by various sources. The Office of the Public Defender reported that detainees, including children, would not be provided with water and food for several hours, and that dozens were placed in the same room regardless of their sex and age. Children were reportedly deprived of liberty mainly to secure the payment of fines.[27]

8. Right to health

66. It is provided in the Universal Declaration of Human Rights that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services" (art. 25).

67. The right to the highest attainable standard of health (referred to here as the "right to health") includes the requirement for health facilities, goods and services to be available in sufficient quantity, to be accessible to all without discrimination and to be within safe and reasonable physical reach. In addition, they should be of good quality, with skilled medical personnel, and be equipped with unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.[28]

68. According to the Office of the Public Defender and other sources, access to medical services is one of the most problematic issues for conflict-affected communities. Patients often have to take a bypass to cross the Administrative Boundary Line to seek medical care

[27] For more information on specific cases, see the "Special report of the Public Defender of Georgia on the rights of women and children in conflict-affected regions, review of 2014-2016", pp. 18 and 19, available from www.ombudsman.ge/uploads/other/4/4319.pdf, and "The human rights situation of the conflict-affected population in Georgia" (2015), available from www.ombudsman.ge/uploads/other/3/3768.pdf.

[28] See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health.

on Georgian-controlled territory — travelling in ordinary motor cars which are not suitable for the transportation of patients in critical condition.

69. According to the Office of the Public Defender, medical infrastructure is underdeveloped and health services are poor in both Abkhazia and South Ossetia. The Office of the Public Defender and other sources reported that medical facilities in Abkhazia were inadequate, due to the lack of qualified specialists, poor equipment and the condition of health-care facilities, especially in Gali district. The low level of qualification of medical personnel and high costs of medical services in Abkhazia and South Ossetia reportedly lead many to seek treatment for serious health conditions outside of these territories, despite the difficulties and risks related to movement across the Administrative Boundary Line. Due to the absence of facilities for children in need of intensive care in Abkhazia, children need to be transported for hours all the way to the city of Kutaisi, thus considerably delaying the provision of medical services when they are urgently required.

70. According to the Office of the Public Defender, several hospitals in South Ossetia have been rehabilitated and refurbished but are mainly used for primary medical purposes by local communities, due to the lack of qualified medical personnel. As the Administrative Boundary Line with South Ossetia is closed (except for in Akhalgori district), patients requiring emergency care are transferred to medical facilities on Georgian-controlled territory, by the International Committee of the Red Cross. The Office of the Public Defender was informed of several fatalities allegedly caused by delayed consent to people moving out of the territory by the Tskhinvali hospital management and the authorities in control.

9. Right to education

71. Under article 26 of the Universal Declaration of Human Rights, everyone has the right to education, which should be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. The right to education is essential to the full enjoyment of a wide array of other rights.

72. It is important to create adequate opportunities for children to learn their mother tongue or to receive instruction in their mother tongue, particularly at the preschool and primary school levels. Children should be given adequate opportunities to learn their mother tongue or to learn through the medium of the mother tongue, alternatives which should not be mutually exclusive. Specific forms of such opportunities should be chosen in consultation with the population affected, taking into account their freely expressed wishes. Curricula should adequately reflect the diversity and plurality of a society.

73. The Office of the Public Defender noted that obstacles to the right to education in one's native language and to access to quality education in general remained a serious issue for communities in Gali district that identify as ethnically Georgian.[7] The Council of Europe noted that Russian had replaced Georgian as the language of instruction in schools in Gali, thus restricting access to the native Georgian language. The Government of Georgia cited restrictions imposed on the education of ethnic Georgian children in their native language in Abkhazia. For instance, out of 31 schools in Gali, 11 schools — all located in the so-called "lower zone" — enjoyed the status of Georgian schools, with Georgian being the language of instruction until the end of the 2014/15 academic year.

74. According to the Office of the Public Defender, teaching in Georgian will be terminated in Gali district schools by 2021 and fully replaced with teaching in Russian. The 2016/17 academic year started in line with these changes, which, according to the Government of Georgia, are aimed at the gradual replacement of the Georgian curriculum with the Russian Federation curriculum for all grades in the 11 schools in the "lower zone" of Gali district.

[7] For more information, see the special report of the Public Defender of Georgia entitled "The right to education in the Gali district: new developments and challenges in the academic year of 2015-2016", available from www.ombudsman.ge/uploads/other/3/3363.pdf.

75. The Office of the Public Defender reported that school administrators and parents in Gali district had opposed this policy, to no avail. Various sources consider that shifting to Russian-language teaching has seriously reduced the quality of education in the regions of Abkhazia populated by ethnic Georgians (i.e. Gali district, and parts of Ochamchire and Tkvarcheli districts), since most children, teachers and parents lack sufficient knowledge in Russian. According to several sources, teachers and schoolchildren continue to unofficially use the Georgian language in schools but have been under increasing pressure to use Russian. Reportedly, there is a tendency for families to move their children to the territory controlled by the Government of Georgia in order to enable them to receive education in their native language.

76. Reportedly, Armenians and Russians in Abkhazia have been receiving education in their native languages, while children of Georgian ethnic origin have been facing further limitations every year on exercising the same right or are unable to do so. Such a policy would be discriminatory towards children of Georgian ethnic origin.

77. OHCHR has been informed that there have been no restrictions in Akhalgori district on education in Georgian. While Russian and Ossetian are considered as the only "official" languages in South Ossetia, Georgian is authorized in areas where the majority of people speak it. OHCHR has been informed that 6 out of 11 public schools in Akhalgori region in South Ossetia are Georgian and that the students are instructed in their native language in accordance with the programme adopted by the Ministry of Education and Science of Georgia.

10. Personal documents

78. OHCHR has not been in a position to assess the impact of various regulations, regimes and practices issued by the authorities in control regarding possession of personal documents in Abkhazia and South Ossetia, beyond aspects presented in the latest report of the Secretary-General to the General Assembly on the status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia (A/71/899). These include the so-called "Law on the Legal Status of Foreigners in Abkhazia", the so-called "Law on Procedures of Exit from the Republic of Abkhazia and the Entry into the Republic of Abkhazia", "No. 9" documents (temporary identification documents) and new crossing documents (*propuski*), as well as "passports" issued by the authorities in control in South Ossetia. Documents issued by the authorities in control in Abkhazia and South Ossetia have been considered null and void by the Government of Georgia.

79. Constraints and ambiguities surrounding the issue of personal documents affect the ability of ethnic Georgians primarily, including returnees, to enjoy their human rights, and further exacerbate their vulnerability. The lack of necessary documents hampers the enjoyment of a number of human rights, including property rights, and freedom of movement, and creates difficulties for the affected population to register births or regulate their civil status. Any type of documentation, even basic or temporary, needs to facilitate access to social, economic, cultural, civil and political rights.

11. Property issues

80. Under article 17 of the Universal Declaration of Human Rights, everyone has the right to own property, alone as well as in association with others, and no one is to be arbitrarily deprived of such property.

81. UNHCR has been advocating with the authorities in control in Abkhazia and South Ossetia to uphold the rights of ethnic Georgian returnees, notably in relation to documentation and freedom of movement.

82. The restitution of housing, land and property left behind by internally displaced persons or the provision of appropriate compensation in lieu of restitution remains a serious challenge that needs to be addressed. The Special Rapporteur on the human rights of

internally displaced persons has emphasized that internally displaced persons are entitled to restitution of or compensation for their property, regardless of whether they choose to return, integrate locally or resettle elsewhere.[30] He noted that the wire fences along the Administrative Boundary Line represent one of the main obstacles to the achievement of durable solutions and for access to land, property, water and livelihoods by internally displaced persons.[31]

83. According to the Government of Georgia, violations of the right to property occur systematically in Abkhazia and South Ossetia. For instance, hundreds of houses of ethnic Georgians were burned or destroyed deliberately during and after the war in August 2008. The setting up of razor wire fences in the middle of private farmlands and orchards has been accompanied by expropriations.

12. Violence against women

84. It would be important to ensure accountability and reparation for cases of sexual and gender-based violence that reportedly occurred during the 2008 conflict.[32]

85. In Abkhazia, according to the Office of the Public Defender, there have been discussions, involving civil society, on domestic violence, and a local organization has reportedly developed a legal framework on combating domestic violence. The authorities in control in Abkhazia recently agreed that the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) could operate in Abkhazia to take over a partnership with a local non-governmental organization active in the prevention of and response to various forms of sexual and gender-based violence. The Office of the Public Defender reported that the situation in South Ossetia was much graver and that no access by relevant international actors was possible.

13. Confidence-building measures

86. The Council of Europe noted[33] that confidence-building measures activities with Abkhazia included meetings between public defenders and civil society representatives from Tbilisi and Sukhumi and training sessions on international standards and practices for relevant actors; projects on architectural heritage; training sessions aimed at developing professional competence on human rights education for children. The confidence-building measures programme continued to evolve, both in terms of the diversity of thematic issues and the diversity of the participants. However, the Council of Europe underscored the lack of involvement of participants from South Ossetia, due to various factors including difficult access.

87. OHCHR encourages discussions on additional confidence-building measures, and welcomes the initiative of the Council of Europe to include human rights awareness in its programme.

88. According to some sources, the local population believes, inter alia, that confidence-building measures can de-escalate the situation around the dividing lines and bring greater peace and security by introducing dialogue across those lines, including between relatives and former neighbours, and by supporting economic exchanges and joint economic projects across the administrative boundary lines.

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[30] See A/HRC/35/27/Add.2, para. 38.

[31] Ibid., para. 26.

[32] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, vol. 2, pp. 355-358.

[33] See Council of Europe document SG/Inf(2017)18.

III. Conclusions

89. The High Commissioner welcomes the continuous cooperation between the Government of Georgia and OHCHR and the commitment of the Government to taking steps to improve the national human rights protection system. The efforts of the Government to bring national laws, policies and practices in line with international human rights standards illustrate the will to comply with its obligations and commitments.

90. Public officials, including at the highest levels, are encouraged to speak up more frequently on the importance of human rights for the development of the country. OHCHR remains committed to supporting the Government of Georgia and other national stakeholders in advancing the realization of all human rights for all in Georgia. However, concerns remain with regard to the lack of any independent and effective framework to investigate, prosecute and punish cases of torture and ill-treatment and provide remedies for victims or their families; to protect the right to privacy and freedom of the media; to combat discrimination; to guarantee the independence of the judiciary and the fairness of trials; and to improve access to economic and social rights for vulnerable people.

91. The High Commissioner regrets that the authorities in control in Abkhazia and South Ossetia have refused to grant access to OHCHR staff members and to the United Nations human rights mechanisms, despite repeated calls in that regard from the highest United Nations officials.

92. Credible and verified information about the human rights situation in Abkhazia and South Ossetia is lacking, while conflicting claims continue to fuel tensions and undermine security, human rights and development efforts. OHCHR reiterates its readiness to assist all those concerned to assess objectively and address effectively the human rights needs of people. According to available information, some practices in Abkhazia and South Ossetia appear to amount to discriminatory patterns based on ethnic grounds, especially with regard to freedom of movement, access to personal documents, the right to education and property rights.

93. More attention should be paid to the human rights consequences of the past conflicts, which continue to adversely affect the daily lives of the local population. OHCHR calls upon all duty bearers to take all appropriate measures to ensure that the rights guaranteed under international law are upheld without discrimination.

94. Continued efforts within the framework of the Geneva International Discussions — under the co-chairmanship of the European Union, the Organization for Security and Cooperation in Europe and the United Nations — as well as under the Joint Incident Prevention and Response Mechanism, are of critical importance to create the necessary conditions for the improvement of the human rights situation in Abkhazia and South Ossetia.

95. Support for people-to-people and intercommunal contacts and for the development of effective ways to tackle the issues pertaining to education, crossings, property claims, women's participation, missing persons and protection of cultural heritage needs to be developed or strengthened. Sports and cultural activities involving youth, as well as joint programmes and study visits for local professionals (e.g. journalists, lawyers and artists) and joint media engagement should be supported.

96. The full participation of women, on equal terms with men, in all aspects of conflict prevention and resolution, including in high-level meetings related to settling conflicts, should be encouraged. All duty bearers are urged to further strengthen efforts to fight against gender-based violence and stereotypical attitudes regarding the roles and responsibilities of women and men in the family and in society.

97. OHCHR welcomes the fact that the authorities in control in Abkhazia provide regular access to some United Nations development and humanitarian actors, and calls for the same treatment of the human rights pillar. OHCHR urges the authorities

in control in South Ossetia to provide regular access for actors dealing with development, human rights, humanitarian issues and peace and security.

98. **OHCHR calls upon the authorities in control in Abkhazia and South Ossetia to grant unhindered access for OHCHR and international and regional human rights mechanisms to be able to assist in the advancement of human rights protection of the affected population.**